contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the the property in the goods is to pass to the buyer."

It is therefore quite clear in my view from the evidence, that the company intended to retain the property in the car until Abdul Karim has paid in full the initial payment of $1,000 under D.6 when he could execute a hire-purchase agreement with a financial company. This is confirmed by what Lau Teck Siew stated in paragraph (e) of his letter to the respondents' solicitors dated 19th July 1962 when he said:

"The car was lent to Mr. Hashim bin Mat Nor (i.e. Abdul Karim) on my permission on 7.3.61."

For the above reason, I would therefore with respect, agree with the finding of the trial judge that the appellants had an insurable interest in the car on the date of the accident and the car was being driven by Abdul Karim with the permission of the insured. I would therefore dismiss the appeal with costs.

MacIntyre J.: I have had the advantage of reading the judgment of the Chief Justice in this appeal and I am in entire agreement with it.

Barakbah L.P. concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Murphy & Dunbar.*

MOHAMED v. KUNJI MOHIDIN

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and MacIntyre J.) September 5, 1966]

[K.L. — Federal Court Civil Appeal No. X21 of 1966]

Tort — Damages to property — Claim by holder of temporary occupation licence.

Land laws — Temporary occupation licence — Rights of holders.

This was an appeal against the judgment of the High Court ([1966] 2 M.L.J. 24) dismissing an appeal from the president, sessions court, awarding damages to the plaintiff-respondent for the loss and damage to his property. The plaintiff was the holder of a temporary occupation licence giving him the right to occupy land and pluck coconuts from trees on the land. The defendant was subsequently given a temporary occupation licence in respect of the land for the purpose of rearing poultry. The defendant entered on the land and cut down some trees on it. The plaintiff bought an action against the defendant and was awarded $2,000 damages.

Held: as the respondent was not the owner of the trees which were not planted by him, he was not entitled to claim damages for loss of the trees; all he was entitled to was loss of income from the coconut trees as the licence was to pluck coconuts only and therefore the amount of damages should be reduced from $2,000 to $86.

FEDERAL COURT.

Raja Abdul Aziz for the appellant.

V. Oorjitham for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: This is an appeal by the defendant against the judgment of a judge of the High Court, Kuala Lumpur, dated 21st February, 1966, dismissing an appeal against the decision of the president, sessions court, Kuala Lumpur, dated 25th February, 1965, awarding damages in the sum of $2,000 to the plaintiff for loss and damage to his property.

The facts are simple. In 1956 the respondent, that is the plaintiff, became the holder of a temporary occupation licence of a small plot of land for a house site on Government land which had an area of about 1½ acres situated at Kampong Kepong. On the said land there were some fruit trees and 73 coconut trees. The respondent also held a licence to pluck coconuts from 34 trees. He was always late in renewing his licence and in 1964 the temporary occupation licence was renewed on 2nd August, 1964 (Exhibit P.3) and the licence for plucking coconuts on 19th August, 1964 (Exhibit P.4B).

On 8th August, 1964, a temporary occupation licence in respect of the said land was given to the appellant for the purpose of rearing poultry. According to the respondent, which was not disputed, on 23rd August, 1964, the appellant entered the said land and cut down 16 coconut trees, 4 rambutan trees, 4 jackfruit trees and 2 guava trees. The respondent therefore claimed $2,000 as damages for loss of the trees including income derived therefrom.

As the respondent was not the owner of the trees which were not planted by him, in my opinion, he was not entitled to claim damages for loss of the trees. In fact, one of the conditions of the temporary occupation licence was that planting of permanent crops was forbidden. All that he could do was to claim damages for loss of income from the coconut trees as the licence was to pluck coconuts only. According to rule 40(iii) of the Land Rules, 1930, under the heading of "Temporary Occupation of State Land":—

"every such licence shall expire not later than the 31st day of December of the year in respect of which it is issued."

In the present case both the respondent and the appellant had temporary occupation licences of the same piece of land, the former to pluck coconuts and the latter to rear poultry. The temporary occupation licences for both of them were for one year only, expiring on 31st day of December and as the appellant started to cut down the coconut trees on 23rd August, 1964, in my view, the respondent could claim the loss of income only from that date till 31st December, 1964, which would be 4 months and 9 days. It is not a disputed fact that the respondent earned $20 per month from the sale of the coconuts and the loss of income would therefore be about $86.

For myself I would allow the appeal by reducing the amount of damages from $2,000 to $86 with costs in this court. Each party is to pay his own costs in the High Court.

MacIntyre J.: I have had the advantage of reading the judgment of the Lord President and I am in entire agreement with it.

Azmi C.J. (Malaya) concurred.

Appeal allowed. Damages reduced.

Solicitors: *Rithauddeen & Aziz; Oorjitham & Lam.*

PUBLIC PROSECUTOR v. LOH KENG KOH

[A.C.J. (Chang Min Tat J.) September 5, 1966]

[Ipoh — Perak Criminal Appeal No. 8 of 1966]

Criminal Law and Procedure — Trial — Prosecution offering witness to defence — Witnesses called by defence — Prosecution not allowed to cross-examine witnesses — Miscarriage of justice.

The accused had been charged for offences relating to the use of a vehicle as a public service vehicle. At the close of the prosecution the prosecuting officer offered certain witnesses, who were passengers in the vehicle, to the defence. Some of these witnesses were called by the defence and the prosecution applied to cross-examine them. The learned magistrate refused to allow the prosecution to do so and he acquitted and discharged the respondent.

Held: there was no justification in this case for excluding the right of the prosecution to examine witnesses for the defence; the exclusion of such examination had caused a miscarriage of justice and the order for acquittal must be set aside and a retrial ordered.

[Editorial Note: Reference may be made to *R.* v. *Sanmugam & Anor.* [1932] M.L.J.; [1933] S.S.L.R. 337 where Whitley J. held: "In a trial by jury the prosecuting officer is not bound to call as a witness for the Crown or tender for cross-examination a witness who gave evidence in the preliminary inquiry whose evidence in his opinion is unnecessary, hostile, or not believed. But such witness must be in attendance. If the accused or his counsel wishes to have such witness called when not called by the Crown, then the witness becomes his witness and the prosecuting officer will have the right of cross-examination."]

Cases referred to:—

(1) *Teh Lee Tong* v. *R.* [1956] M.L.J. 194.

(2) *R.* v. *O'Connell* (1844), 7 Ir. L.R. 261 at p. 312, 313.

MAGISTRATE'S CRIMINAL APPEAL.

Idris bin Yusoff (Deputy Public Prosecutor) for the appellant.

E. K. Yeap for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: In this appeal, the public prosecutor appealed against the acquittal of the respondent by the learned magistrate sitting at Bruas, Perak, on three charges connected with his operation of a motor car No. PA 2765.

The charges were that, firstly, on 4th August, 1965, at 3.00 p.m. in Pantai Remis, Perak, he used the said vehicle as a public service vehicle without a valid licence, an offence punishable under section 92(1) of the Road Traffic Ordinance; secondly, without paying the higher fees chargeable for a public service vehicle, an offence punishable under section 22(2) of the Road Traffic Ordinance, and, thirdly, without a valid policy of insurance for such user as a public service vehicle, an offence punishable under section 74(2) of the said Ordinance.

The prosecution relied, as they were perfectly entitled to do, on the evidence of adequate groundwork of the operation of the said car by the respondent from 10th February, 1965 to 4th March, 1965, and on the presumptions under section 144 of the Road Traffic Ordinance. At the close of the case for the prosecution, the prosecuting officer made available for the defence the 5 passengers found by the police to have been carried by the respondent in his car on 4th March, 1965. What the learned magistrate recorded was:—

"The following witnesses: Beh Ah Bee, Yeoh Sin On, Ng Seh Mooi and Lim Sui Tiang — offered to the defence."

I do not think that when the learned magistrate recorded this part of the proceedings there was any possibility of doubt that the prosecution did not propose, as they were again perfectly entitled to do (See *Teh Lee Tong* v. *R.*[1] to call those witnesses for the prosecution or that they were not offering them as witnesses for the prosecution, for cross-examination by the defence. That there is no such doubt is clear by the record made by the learned trial magistrate of the right reserved by the then defence counsel of calling these witnesses, if the defence was called. One should have thought this reservation redundant, but nonetheless defence counsel had his say.

In the events that happened, the defence was called. Respondent gave affirmed evidence and was duly cross-examined and re-examined. The case was then adjourned to another day. At the resumption, respondent changed counsel. His new counsel then proceeded to call 3 of the 5 passengers, the other two being absent from court on that day. The first defence witness, on being affirmed, gave evidence that he obtained a free lift from the respondent on that day and had no intention of paying nor did he pay any fare.

At this point, the record of the proceedings reads as follows:—

"*XXN. by Prosecution*:— (*Sarkar* on Evidence, section 154), page 1218 Defence counsel objects to cross-examination by the prosecution: as the prosecution: merely tenders the witness without his examination. Objection upheld."